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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In Re the Dependency of S.K-P.  
In re the Dependency of E.H.

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***AMICUS CURIAE* BRIEF OF LEGAL COUNSEL FOR  
YOUTH AND CHILDREN**

IN SUPPORT OF APPELLANTS

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## **I. INTRODUCTION**

In addition to the arguments outlined in the *Amici Curiae* Brief of Legal Counsel for Youth and Children and Team Child, filed in Division II for *In re the Dependency of S.K-P.*, it is important to highlight the rising stakes of this issue today. Foster youth currently face a state-wide placement crisis, which has resulted in an unacceptable amount of instability and placements far from families of origin as well as long-term instability and homelessness when youth exit the child welfare system. Children need attorneys to hold the state accountable for failing so many children in their care. Courts across the state do not consistently appoint attorneys for children in dependency cases, but data shows these attorneys, when appointed and especially when appointed early, have a positive impact on outcomes and greatly diminish the harms to Washington's most vulnerable youth.

## **II. IDENTITY AND INTEREST OF *AMICUS***

The identity and interests of Legal Counsel for Youth and Children ("LCYC") are set forth in its Motion to File *Amicus Curiae* Brief, filed herewith.

## **III. STATEMENT OF THE CASE**

LCYC adopts the Children's statements of the cases. The records show that these children, like all children who enter state custody through

a shelter care proceeding, would have benefitted from an attorney to safeguard their rights and interests throughout their dependency cases.

#### **IV. ARGUMENT**

##### **A. DEPENDENT YOUTH ARE AT HIGH RISK FOR NEGATIVE HOUSING, SOCIAL, DEVELOPMENTAL, AND EDUCATIONAL OUTCOMES.**

###### **1. Children Exiting Our Foster Care System Without Stable Homes and Connections are at High Risk for Immediate and Future Homelessness.**

Too many foster youth exit the child welfare system in crisis. In June of 2017, the Department of Social and Health Services (“DSHS”) released a report on the number of youth exiting the foster care system into unstable housing and/or homelessness between 2013 and 2015. For all three years, approximately 20 percent were homeless or unstably housed within six months of aging out and approximately 29 percent within 12 months.<sup>1</sup> In 2015, the 23 percent of youth exiting foster care who were employed, only made an average of \$786 per year.<sup>2</sup> Many youth exiting foster care face additional challenges; in 2015, 82 percent of youth exiting foster care had a mental health or behavioral disorder, 42 percent had a substance use disorder, and 20 percent suffered from a chronic illness.<sup>3</sup> If children do not achieve stability and basic skills while in state care, it is

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<sup>1</sup> Washington State DSHS Research and Data Analysis Division, *Housing Status of Youth Exiting Foster Care, Behavioral Health and Criminal Justice Systems*, June 2017, at 5, <https://www.dshs.wa.gov/sites/default/files/SESA/rda/documents/research-11-240.pdf>.

<sup>2</sup> *Id.* at 17.

<sup>3</sup> *Id.*

unreasonable to expect them to successfully navigate life as young adults, particularly in the absence of a strong support network.

## **2. Washington State is in the Midst of a Tragic Placement Crisis.**

In recent years, Washington has faced a growing foster home shortage. Some estimates put Washington at nearly 1,000 homes short of where it must be to meet the placement need.<sup>4</sup> “On any given day, there are approximately 9,000 children placed in out-of-home care by the Division of Children and Family Services (DCFS). Approximately 55% of these children are placed in licensed foster care, and 40% in relative and kinship homes.”<sup>5</sup>

Washington has experienced a decline in the number of licensed foster homes since 2012, yet the number of children requiring out-of-home care has increased. As a result of limited placement resources, children in state care have been placed in hotels or Department offices, waiting for the Department to find an appropriate placement.<sup>6</sup>

Placing youth in foster homes that are ill prepared or unable to support them causes additional harm to children.

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<sup>4</sup> “The state lost nearly one in five foster homes between 2008 and 2015 as families quit and potential recruits couldn’t be persuaded to sign up. . . The number of available homes plummeted to about 4,600 last year – more than 1,000 below the typical level.” Allegra Abramo & Susanna Ray, *Foster Parents Abandoning Troubled System*, Crosscut (Oct. 28, 2016), <http://features.crosscut.com/washington-foster-care-system-parents-abandon-troubled>.

<sup>5</sup> 2017 Annual Report of the Office of the Family and Children’s Ombuds, at 30, available: <http://ofco.wa.gov/wp-content/uploads/2017-OFCO-Annual-Report.pdf>.

<sup>6</sup> *Id.* at 5.

### **3. Children are Spending More Time in Temporary Placements, Including Hotels and Offices.**

In 2017, the Office of the Family and Children's Ombuds ("OFCO") received 917 complaints against Children's Administration ("CA"), "by far the most OFCO has ever received in a single year."<sup>7</sup> "OFCO completed 956 complaint investigations in 2017, over 200 more than the previous year[.]"<sup>8</sup> Emergent complaints requiring intervention or timely assistance to resolve were up 10.2 percent in 2017.<sup>9</sup> Of the 917 complaints, 86 prompted intervention by OFCO and OFCO made 52 formal adverse findings against CA.<sup>10</sup> The number of adverse findings against CA in 2016 was 41.<sup>11</sup> "Nearly 40 percent of the 1,393 children identified in complaints were four years of age or younger. Another 30 percent were between ages five and nine."<sup>12</sup>

Many complaints involved placement exceptions, where CA cannot find an approved placement and houses a child temporarily in a night-to-night respite home, hotel, or CA office instead. OFCO's 2017 report describes 824 "placement exceptions" involving 195 children.<sup>13</sup>

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<sup>7</sup> 2017 Ombuds, *supra* note 8, at 11.

<sup>8</sup> *Id.* at 19.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.* at 24.

<sup>12</sup> *Id.* at 13.

<sup>13</sup> *Id.* at 5-6.

These occurred most frequently in DSHS Region 2, which includes population-dense Snohomish and King counties.<sup>14</sup> The vast majority (773) of placement exceptions involved children spending the night with social workers in hotels, while there were 47 known instances of children spending the night in DCFS offices.<sup>15</sup>

The statistics are staggering. “Just over ten percent of children involved in placement exceptions spent a total of ten or more nights in a hotel or DCFS office.<sup>16</sup> The most nights any individual child spent in a hotel or office was 38 (six children had at least 30 placement exceptions).<sup>17</sup> Just over 42 percent of children who spent at least one night in a hotel or DCFS office were nine years or younger, with 21 children under the age of four requiring placement in a hotel.<sup>18</sup>

In several instances the children did *not* have extreme behaviors or therapeutic needs, but DCFS could not find any other placement options in time . . . A 6 year old child came into DCFS’s care following allegations of physical abuse in the home. . . Over the course of the 2016-2017 reporting year, the child experienced a combined total of 38 placement exceptions.<sup>19</sup>

The majority of dependent youth experience multiple placements

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<sup>14</sup> Id.

<sup>15</sup> Id. at 47.

<sup>16</sup> Id. at 49.

<sup>17</sup> Id.

<sup>18</sup> Id. at 51.

<sup>19</sup> Id. at 47-48 (emphasis added).



during their time in foster care.<sup>20</sup> “Separate studies conducted within the past three decades confirm that older child age is associated with increased risk for placement change.”<sup>21</sup>

“Spending the night in a hotel or office, even just once, can be traumatizing for children who have experienced abuse and/or neglect” and results in children being handed off to multiple shift social workers, spending all day in DCFS offices before arriving late in hotels, and missing school.<sup>22</sup> “Placement exceptions and related instability put children at risk.”<sup>23</sup>

#### **4. A Lack of Stability Has Long-Term Negative Effects On Children’s Mental Health, Ability to Form Healthy Relationships in Their Lifetimes, and Education.**

The absence of a stable placement can contribute to a number of negative outcomes such as challenges attending and keeping up in school, a lack of continuity with service providers, separation from

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<sup>20</sup> “The result is a system so strained that some kids are being moved dozens of times, more than a decade after the state settled a lawsuit requiring it to give foster children more stability. This extreme rootlessness hurts their chances of emerging as productive citizens. That means greater costs for taxpayers, since former foster children as young adults face high rates of homelessness, along with drug abuse and the resulting arrests and hospitalizations.” Abramo, Allegra; Ray, Susanna, *What InvestigateWest Has Uncovered So Far on Foster Care*, Crosscut (Oct. 28, 2016),

<http://invw.org/2016/10/28/what-investigatwest-has-uncovered-so-far-on-foster-care/>.

<sup>21</sup> Stephanie Luczak, Nicole Updegrove & Lauren Ruth, Ph.D., *Between People and Places: Reducing Upheaval for Children Moving Around in Connecticut Foster Care*, January 2018, at 3,

<http://www.ctvoices.org/sites/default/files/Placement%20Change%20Report.pdf>.

<sup>22</sup> 2017 Ombuds, *supra* note 5, at 48.

<sup>23</sup> *Id.*

family or positive connections in their communities, increased emotional and behavioral challenges, increased victimization, and an increased likelihood of running from care.<sup>24</sup>

In 2017, OFCO received 126 complaints regarding CA's failure to ensure appropriate visitation or contact between children and their parents, siblings, or relatives.<sup>25</sup> In 2017, OFCO also received 52 complaints as to the "agency's failure to provide adequate services to a dependent child."<sup>26</sup>

Removing children from their homes may result in children developing insecure attachment styles. "Fortunately, creating significant and positive relationships with new adults can serve to increase the resiliency of children in foster care and increase secure attachment."<sup>27</sup> "However, experiencing multiple placements or forming an insecure

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<sup>24</sup> Erin Shea-McCann, Legal Services for Youth and Children, *Empty Promises: Homeless Minors, Our Community's Failure to Adequately Serve Them, and Hope for a Way Forward*, October 2017, at 15, <https://static1.squarespace.com/static/533dcf7ce4b0f92a7a64292e/t/59ee58a8692ebefa889a71c3/1508792492785/2017+Empty+Promises.pdf>.

<sup>25</sup> 2017 Ombuds, *supra* note 5, at 14.

<sup>26</sup> *Id.* at 15. Additionally, "[t]urnover rates among caseworkers state wide is approximately 20%. This has a significant impact on vulnerable children. One study found that a child with one caseworker throughout her case has 75% likelihood of placement in a stable and permanent home within one year. If the case is transferred to a new caseworker within one year, the percentage drops to 18%." *Id.* at 45 (citing Review of Turnover in Milwaukee County Private Agency Child Welfare Ongoing Case Management Staff (2005), Flower, McDonald and Sumski. [http://www.uh.edu/socialwork/\\_docs/cwep/national-iv-e/turnoverstudy.pdf](http://www.uh.edu/socialwork/_docs/cwep/national-iv-e/turnoverstudy.pdf)). In King County, all children typically receive a new case worker after the first hearing.

<sup>27</sup> Luczak et al., *supra* note 21, at 6.

relationship with foster parents will have the opposite effect.<sup>28</sup>

“[E]xperiencing numerous placements increases children’s risk of developing internalizing and externalizing behaviors associated with insecure attachment.”<sup>29</sup> “This can become a vicious cycle: when children experience repeated placement changes, they may struggle understanding their emotional response to these events and engage in maladaptive behavior leading to a progression of instability and damage to a child’s life.”<sup>30</sup> Foster children of all ages increasingly rely on outpatient and emergency medical care as the number of placement changes increases.<sup>31</sup>

Placement changes to distant locations can result in long daily commutes to school or changes in school, which leads to significant educational challenges.<sup>32</sup> One study found that children who were in foster care for more than 12 months were more likely to be suspended or expelled from school, and the number of “placement changes was associated with having at least one skill delay in academic performance.”<sup>33</sup> “Another national study of foster care alumni found that fewer placement changes strongly predicted likelihood of graduating from high school, and that when youth experience one fewer placement change per year, they are

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<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Id. at 7.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Id. at 7-8.

1.8 times more likely to graduate high school while in care.”<sup>34</sup>

“One study indicated a strong statistical significance between multiple placements and life dissatisfaction, low self-efficacy, and criminal convictions.”<sup>35</sup> These outcomes negatively impact children’s ability later in life to try new things, find jobs, pursue higher education, develop and explore social relationships, start a family, avoid criminal behavior, reach their full potential, and lead fulfilling lives.<sup>36</sup>

Foster youth living in group homes feel the effects of the placement crisis perhaps even more acutely than their counterparts. In 2007 and 2016, OFCO conducted site visits and surveys of youth residing in group care facilities.

In 2007, OFCO felt some of the larger group homes were institutional, run-down, and drab.<sup>37</sup> Almost all youth living far from their home regions were unhappy due to less contact with their communities.<sup>38</sup> Of youth surveyed, 29 percent reported feeling unsafe.<sup>39</sup> Several youth in the survey identified limited access to clothing, personal hygiene items,

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<sup>34</sup> Id. at 8.

<sup>35</sup> Id.

<sup>36</sup> Id.

<sup>37</sup> Office of the Family and Children’s Ombudsman, *Group Care: What Youth Say About Living in a Group Home* (2007) [hereinafter Ombudsman, *Group Care*], at 8, [http://ofco.wa.gov/wp-content/uploads/group\\_care\\_final\\_2007.pdf](http://ofco.wa.gov/wp-content/uploads/group_care_final_2007.pdf).

<sup>38</sup> Id. at 9.

<sup>39</sup> Id. at 12.

decent food, and clean homes.<sup>40</sup> In addition, OFCO found that the state requirements for ratio of staff to residents and credentials of staff did not meet recommended levels.<sup>41</sup> Youth in several homes reported no privacy when calling family, friends, or service providers.<sup>42</sup> Most youth were unaware of a new law allowing them to petition for reinstatement of parental rights and were interested in speaking with an attorney about this.<sup>43</sup> Youth's safety concerns prompted OFCO and Division of Licensed Resources intervention and the closure of at least three facilities.<sup>44</sup>

In 2016, OFCO found that 44 percent of youth living in Behavioral Rehabilitative Services group homes were 12 years old or younger and 80 percent were males.<sup>45</sup> Two children were five years old, requiring a waiver of state policy.<sup>46</sup> "64.3 percent of those surveyed said they have lived in at least two group care facilities; and just over eleven percent of youth said they have lived in six or more group homes."<sup>47</sup>

There were a variety of negative outcomes youth and staff reported. LGBTQ+ youth, who are likely overrepresented within the child

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<sup>40</sup> *Id.* at 23.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 14.

<sup>43</sup> *Id.* at 17.

<sup>44</sup> *Id.* at 23.

<sup>45</sup> Washington Office of the Family and Children's Ombuds, *Youth's Perspectives on Group Care: Outreach to Youth Living in Washington's Group Homes* (2016) [hereinafter Ombuds, *Youth's Perspectives*], at 2, <http://ofco.wa.gov/wp-content/uploads/FINAL-2016-OFEO-Youth-Perspectives-on-Group-Care.pdf>.

<sup>46</sup> *Id.* at 16.

<sup>47</sup> *Id.*

welfare system, faced isolation and bullying and did not feel supported by residents or staff.<sup>48</sup> “Children and youth expressed a need for more contact and social engagement with friends, relatives, and family.<sup>49</sup> Youth stated it was hard or impossible to make or keep friends outside of the facility due to the restrictive nature of group care.<sup>50</sup> Youth were in desperate need of more contact with their caseworkers.<sup>51</sup> Group care staff reported, “It would be nice to have bi-weekly [Independent Living Skills] group. Kids aging out of group homes do not seem prepared for adult life.”<sup>52</sup> LCYC and its partners also found some youth entering group homes submit to peer pressure and begin experimenting with various drugs and life on the street or develop other new, negative behaviors.<sup>53</sup>

According to OFCO, many children received no information about the group home before arriving or knew what needed to happen before they could leave, with some believing they were placed there as a punishment for bad behavior.<sup>54</sup> Only “58 percent of youth surveyed said they were told their rights at the group home.”<sup>55</sup> Youth consistently

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<sup>48</sup> *Id.* at 23-24. *See also*, Shea-McCann, *supra* note 24, at 4.

<sup>49</sup> *Id.* at 2.

<sup>50</sup> *Id.* at 18-19.

<sup>51</sup> *Id.* at 2.

<sup>52</sup> *Id.* at 18.

<sup>53</sup> Shea-McCann, *supra* note 24, at 16-17. One LCYC client’s group home identified multiple diagnoses and behavioral problems up until his exit. Within one month of entering a foster family home, he exhibited no behavioral problems.

<sup>54</sup> Ombuds, *Youth’s Perspectives*, *supra* note 45, at 20.

<sup>55</sup> *Id.*

reported a lack of information regarding their home, their rights, and resources.<sup>56</sup>

**B. LEGAL ADVOCATES FOR CHILDREN HELP REDUCE HARM AND THE RISK OF NEGATIVE OUTCOMES.**

In 2017, “[a]s in previous years, few children contacted OFCO on their own behalf.”<sup>57</sup> Adults who know calling OFCO is an option may still be reluctant to issue a complaint. In 2017, “[s]ome foster parents told OFCO they are reluctant to discuss these issues with a DCFS supervisor or file a complaint with OFCO or Constituent Relations because they fear the Department will remove a child in their care or take other adverse actions in response to their complaint.”<sup>58</sup> Children are even less likely to complain; they may not know what OFCO is or how it can help or they be concerned a complaint could lead to further disruptions, problems in their placement, or with their social worker. For the majority of youth in foster care, the adults they are connected to are part of the same faulty system about which they want to complain. Children would be more likely to understand and take action to protect their legal rights if they had attorneys advising them and advocating for their positions.

LCYC represents approximately 200 dependency children in King County annually. In 2015, upon review of internal case data, LCYC found

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<sup>56</sup> Ombudsman, *Group Care*, *supra* note 37, at 24.

<sup>57</sup> 2017 Ombuds, *supra* note 5, at 12.

<sup>58</sup> *Id.* at 30.

that youth who were appointed an attorney at the first dependency hearing were 20 percent more likely to reside with known persons instead of foster parents than those children appointed attorneys sometime after the initial shelter care hearing (and 27 percent more than those children without an attorney until after termination of parental rights).<sup>59</sup> Of the contested motions LCYC filed, 42 percent related to the child's placement and 27 percent involved family visitation.<sup>60</sup> Keeping children connected to their family and community helps to increase stability and decrease the likelihood that they will run or experience homelessness in the future.<sup>61</sup> LCYC cases further illustrate the need for a skilled dependency attorney.

Lucia<sup>62</sup> was on the run for several months at the start of her dependency case, when DSHS filed a petition on her and younger siblings. DSHS told her they would not approve her identified placement with a suitable adult. Lucia, who was already struggling with homelessness, did not attend the first court hearing. She did not realize that she would have an attorney who could ask the court to approve her proposed placement over the social worker's objection. Fortunately, because Lucia was in King County and over the age of 12, an attorney was appointed to represent her.

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<sup>59</sup> *Amici Curiae* Brief of Legal Counsel for Youth and Children and of TeamChild, at 7, *In re the Dependency of S.K-P.*, No. 48299-1-II (Div. II August 18, 2018).

<sup>60</sup> Shea-McCann, *supra* note 24, at 18.

<sup>61</sup> *Id.*

<sup>62</sup> Names and other identifying information have been changed to protect the identities of LCYC clients.



Lucia's LCYC attorney communicated with her through multiple mediums until Lucia was willing to meet. The attorney quashed the dependency warrant and set a hearing on shortened time to address placement with a suitable adult. Lucia continues to reside with her preferred caregiver, approved by the court, and is accessing necessary services.

When the court appointed LCYC to represent 12 year-old Sarkis, he had spent the majority of his childhood in group homes, had not seen his twin (also in foster care) in years, and he felt isolated attending a specialized school for children with behavioral issues. His attorney immediately filed and won a motion for in-person, regular visits for the twins. Sarkis' attorney also pushed to move him out of a distant group home and into a therapeutic foster home closer to his twin and other relatives, which allowed for regular family visitation. Sarkis thrived in a family-like setting with stable services and supports. Through advocacy by his attorney, foster parent, and Sarkis' hard work, he moved from an isolated education setting into the local public high school. His Individualized Education Plan ("IEP") was eventually terminated because it was no longer needed. His attorney also advocated for DSHS to continue its search for a pre-adoptive home for Sarkis when he was ready to be adopted at the age of 15, even though DSHS had largely stopped

looking due to his age. With pressure, DSHS found a home and Sarkis transitioned smoothly at the age of 16. He was adopted six months later.

LCYC was appointed to represent a dependent teenager named Genevieve. Genevieve became pregnant herself while dependent, and the state filed a second dependency case arguing Genevieve could not care for her own child as a teen mother. Genevieve's attorney convinced the court to place that child with Genevieve in her foster home, over the state's objection. However, as a result of the state's objection, Genevieve's relationship with her social worker was incredibly strained. There are few placements available for teen mothers; it was difficult to find supportive and stable placements for Genevieve and her child. Genevieve's attorney advocated for two rounds of Family Preservation Services to help support and stabilize Genevieve in a foster placement with her son. Genevieve's attorney also advocated for her safety and a specialized education plan at school. Genevieve worked closely with her attorney, graduated from high school, became a better parent, received mental health counseling, was connected to parenting supports and other services, and exited extended foster care with her own home. Genevieve's child was never removed from her care and that dependency matter was dismissed.

A concerned therapist contacted LCYC requesting that an attorney meet with a dependent nine year-old named Joaquin to assess his desire

for counsel. Joaquin had learning and behavioral disabilities, functioning at a six or seven year-old level, and the therapist questioned the appropriateness of his special education services. Joaquin had also been separated from his three siblings, who lived together in another foster home, and had not had any visits with them or his mother in months. An agreed dependency order had been in place for several months, but no CASA had yet been assigned for the children. The attorney met Joaquin and discussed in a developmentally appropriate manner the job of a lawyer and the things Joaquin wanted to change in his case. Joaquin wrote a declaration with the attorney, who successfully motioned for appointment of counsel, at which point the CASA program finally assigned a CASA for the children. The attorney worked to immediately reinstate consistent and frequent visitation for the family. Over the course of representation, the attorney was able to better tailor Joaquin's IEP, which resulted in improvements in his behavior, grades, academic progress, and school placement. The attorney also ensured placement stability when Joaquin's foster family chose to leave its private licensor, keeping Joaquin with the family he knew rather than the licensor. Finally, the attorney worked to ensure the continuity of services, particularly his therapist, despite moves. The court ultimately granted Joaquin's request to go home to his mother, where he continues to reside and await dismissal.

**C. THE CURRENT FRAMEWORK FOR APPOINTMENT OF COUNSEL IS FAILING FOSTER YOUTH.**

The current case-by-case standard of appointing counsel for youth in dependencies has proved unworkable in Washington. Whether a child has an attorney who can help them navigate the oftentimes traumatic world of child welfare depends on geography and luck. This appointment system falls dramatically short of a fair and just application of the law. In 2013, OFCO found:

Whether or not a child is represented by an attorney in a dependency proceeding depends largely on local practices in the county where the child's case is heard. As a result, a child in one county may have an attorney advocating for the child's stated interests and protecting the child's legal rights on issues such as placement, sibling visits, educational rights and school moves, or the appropriateness of psychotropic medications. In a neighboring county, a similarly situated child may have only a volunteer Court Appointed Special Advocate (CASA), or Guardian Ad Litem (GAL) making recommendations to the court based on their belief of what is in "the best interest of the child."

In recent years, the legislature has enacted laws to better protect the child's legal interests . . . These steps alone are inadequate[.]<sup>63</sup>

The 2013 Annual Report of the OFCO described a case in which a five-year-old and her siblings were removed in 2005 and who, over the next eight years, experienced over 20 placements across the state and out-of-state, separation from her siblings, group care, and

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<sup>63</sup> 2013 Annual Report of the Office of the Family and Children's Ombuds at 55, [http://ofco.wa.gov/wp-content/uploads/ofco\\_2013\\_annual.pdf](http://ofco.wa.gov/wp-content/uploads/ofco_2013_annual.pdf).

termination.<sup>64</sup> She never had an attorney who could have advocated for her around changing placements, achieving permanency, sibling separation and visitation, and mental health services to help alleviate the effects of instability.

OFCO believes that efforts to notify children of their right to request an attorney are inadequate and fail to address the disparity in legal representation throughout the state. First of all, while the court has the discretion to grant a child's request for an attorney, the court also has the discretion to deny the request. This has resulted in disparate practices around the state. It is common practice, for example, in King and Spokane Counties, for children age 12 and older to be appointed an attorney in a dependency case. In Benton and Franklin Counties, children age nine and older are appointed attorneys and children age eight and younger are appointed a CASA. Until recently, Asotin, Garfield and Columbia counties had a long-standing practice of appointing attorneys for every child (of any age) removed from the parents' care because of alleged abuse or neglect. In many other counties, however, children are rarely appointed an attorney, regardless of age. According to Judicial Information System data, only 41 percent of children ages 12 to 18 are represented by an attorney in dependency and termination of parental rights cases in our state. Whether or not a child has an attorney depends more on where the case was filed than on the facts and circumstances of the case.<sup>65</sup>

In LCYC's experience, motions for counsel are frequently contested by one party or another. An attorney must present a legal analysis to the court, applying the *Mathews* balancing test to the facts at

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<sup>64</sup> *Id.* at 60-61. "In some counties, there is a waiting list for a CASA/GAL to be assigned for a child at the outset of the dependency proceedings." *Id.* at 56.

<sup>65</sup> *Id.* at 58.

hand. This is a challenge for counsel and not something we can expect a youth in foster care to undertake alone.

Furthermore, the importance of children and youth having an attorney from the first court hearing onward cannot be overstated. Their constitutionally protected rights to safety and family are the essence of the first hearing, which addresses removal and placement for the first time and sets the course of the case. “According to one study, the greatest risk of placement change occurs during the first 6-month period in the first out-of-home placement. If a child is removed from the initial out-of-home placement, the risk of a subsequent placement change increases.”<sup>66</sup>

Attorneys for children help to ensure the first placement is appropriate and supported with any necessary services.

LCYC has litigated a number of first hearings in dependency matters, often around issues of placement and visitation. The child’s attorney can present, and the court may approve, placement options that DSHS has either overlooked, is unable to support due to policies, or has not yet approved because there has not been time to complete a background check. LCYC has successfully placed youth in long term, stable placements after contested hearings.

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<sup>66</sup> Luczak et al., *supra* note 21, at 3.

All children have constitutionally protected rights at stake from the moment the dependency petition is filed; they need an advocate from the first hearing onward to help them understand a complex legal process, to protect their legal rights, to advise them in a developmentally appropriate manner, and to advocate for their stated interests. Youth need attorneys to hold the DSHS accountable every step of the way; we cannot continue to stand by and watch children exiting state care into homelessness.

#### **IV. CONCLUSION**

LCYC respectfully urges the Court to hold that all children who are the subject of a dependency petition are entitled to appointment of legal counsel at the shelter care hearing and in any subsequent dependency proceeding. Children need a zealous advocate to protect the fundamental rights at stake in their cases and to avoid the harms that come with the unfortunate challenges of the child welfare system. Only skilled attorneys can protect a child's unique legal rights and liberty interests at each critical stage of the dependency process.

Respectfully submitted this 1st day of February, 2018.



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